

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

MARGARET JEAN SMITH,

Petitioner,

v.

CIVIL ACTION NO. 5:24-cv-00015

STEPHANIE R. MCCOMAS,
STATE HOMELAND SECUIRTY,
FEDERAL HOMELAND SECURITY,
JEFF SANDY, *WV Homeland Security*,

Respondents.

ORDER

Pending are Margaret Jean Smith's Application to Proceed Without Prepayment of Fees and Costs [ECF 1], filed January 8, 2024, Amended Complaint [ECF 6], filed February 21, 2024, and Letter-Form Motion to Amend Amended Complaint [ECF 9], filed March 22, 2024. This action was previously referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission of proposed findings and a recommendation ("PF&R"). Magistrate Judge Aboulhosn filed his PF&R on February 23, 2024. Magistrate Judge Aboulhosn recommended that the Court deny Ms. Smith's Application to Proceed Without Prepayment of Fees and Costs [ECF 1], dismiss Ms. Smith's Amended Complaint [ECF 6], and remove this matter from the Court's docket.

The Court need not review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140 (1985); *see also* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the

report or specified proposed findings or recommendations *to which objection is made.*” (emphasis added)). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner’s right to appeal the Court’s order. *See* 28 U.S.C. § 636(b)(1); *see also United States v. De Leon-Ramirez*, 925 F.3d 177, 181 (4th Cir. 2019) (Parties may not typically “appeal a magistrate judge’s findings that were not objected to below, as § 636(b) doesn’t require de novo review absent objection.”); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989). Further, the Court need not conduct de novo review when a party “makes general and conclusory objections that do not direct the Court to a specific error in the magistrate’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). “[T]o preserve for appeal an issue in a magistrate judge’s report, a party must object to the finding or recommendation on that issue with sufficient specificity so as reasonably to alert the district court of the true ground for the objection.” *United States v. Midgette*, 478 F.3d 616, 622 (4th Cir. 2007). “If the grounds for objection are clear, district court judges must consider them de novo, or else run afoul of both § 636(b)(1) and Article III.” *Elijah v. Dunbar*, 66 F.4th 454, 460 (4th Cir. 2023).

Ms. Smith filed her objections on March 11, 2024. [ECF 8]. She objected to Magistrate Judge Aboulhosn’s putative finding that she “failed to state rule of law.” [*Id.*]. That general, conclusory statement gives no hint respecting the basis for her challenge. It thus does not warrant review.

Also pending is Ms. Smith’s Letter-Form Motion to Amend Amended Complaint. Previously, Magistrate Judge Aboulhosn permitted Ms. Smith to amend her Complaint to add individuals she alleged violated her civil rights. [ECF 5]. As Magistrate Judge Aboulhosn noted, the factual allegations in Ms. Smith’s Amended Complaint involve “similar, if not identical, allegations, wherein she was previously provided an opportunity to amend, but she still failed to

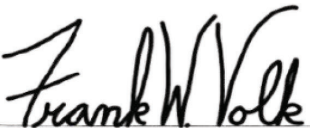
state any cognizable claim for relief.” [ECF 7 at 1 n. 2]; *see also, e.g., Margaret Jean Smith v. United States of America, et al.*, No. 5:21-cv-00677 (S.D. W.Va.). Ms. Smith now asks the Court for the same relief. Inasmuch as Ms. Smith’s current claims are barred by *res judicata*, the proposed amendment would be futile.

Accordingly, the Court **ADOPTS** the PF&R [ECF 7], **DENIES** Ms. Smith’s Application to Proceed Without Prepayment of Fees and Costs [ECF 1], and Letter-Form Motion to Amend Amended Complaint [ECF 9], **DISMISSES** the Amended Complaint [ECF 6], and **DISMISSES** the matter.

The Court directs the Clerk to transmit a copy of this Order to any counsel of record and any unrepresented party.

ENTER: April 24, 2024




Frank W. Volk
United States District Judge